IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4031 OF 2005

Shri A. Sangameshwaram & Anr. : Petitioners

V/s.

The Deputy Registrar of Co-operative Societies, 'M' Ward, Mumbai & Ors. : Respondents

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Mr.N. Srivastava for the petitioners.

Mr.S.K.Chinchalikar, Asstt. Govt. Pleader, for the respondent nos.1 to 4.

Mr.H.J.Thakkar with Mr.B. Mohidin for the respondent nos.5 and 6.

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CORAM : S.A. BOBDE, J.

August 19, 2005.

ORAL ORDER:

1. Rule, returnable forthwith.

Mr.Chinchalikar, learned Asstt. Govt. Pleader, for the respondent nos.1 to 4 and Mr.Thakkar, learned counsel for the respondent nos.5 and 6, appear and waive service of rule.

Heard by consent.

2. The petitioners have challenged the order dated 12.4.2005 passed by the learned Minister for Co-operation in revision. The matter arises out of supersession of the petitioners under section 78 of the Maharashtra Co-operative Societies Act, 1960, hereinafter referred to as the "Act". A show cause notice was issued to the petitioners wherein, inter alia, two important charges were levelled against them. They were: (i) they had not executed a bond as required under section 73(1AB); and (ii) such a bond had not been submitted to the Registrar.

3. The Deputy Registrar considered the reply and came to the conclusion about the bonds as per section 73(1AB) that out of six Managing Committee members, four have submitted theirs on 11.8.2003 but two had submitted on 2.10.2004.

4. The Divisional Joint Registrar appears to have confirmed the aforesaid order of the Deputy Registrar as requiring "no interference". But the Divisional Joint Registrar has come to the conclusion that the Managing Committee has not executed the Joint Liability Bond in Form M-20 as statutorily required under section 73(1AB) read with rule 58A. It is difficult to see how, having differed with the order of the Deputy Registrar on this vital aspect, the Divisional Joint Registrar found no

reason to interfere and observed that the impugned order requires no interference.

5. When the matter was carried in revision before the learned Minister for Co-operation, Maharashtra State, this point was agitated before the revisional authority. However, the revisional authority has admittedly not adverted to this aspect, viz., compliance of section 73(1AB) and has not given any finding thereon.

6. Section 73(1AB) of the Act reads as follows:-

> "(1AB) The members of the committee shall be jointly and severally responsible for all the decisions taken by the committee during its term relating to the business of the society. The members of the committee shall be jointly and severally responsible for all the acts and omissions detrimental to the interest of the society. Every such member shall execute a bond to the effect within fifteen days of his assuming the office, in the form as specified by the State Government by general or special order. The member who fails to execute such bond within the specified period

shall be deemed to have vacated his office as a member of the Committee.

Provided that, before fixing any responsibility mentioned above, the Registrar shall inspect the record of the society and decide as to whether the losses incurred by the society are on account of facts or omissions on the part of the members of the committee or on account of any natural calamities, accident or any circumstances beyond the control of such members:

Provided further that, any member of the committee, who does not agree with any of the resolution or decision of the committee, may express his dissenting opinion which shall be recorded in the proceedings of the meeting and such member shall not be held responsible for the decision embodied in the said resolution or such acts or omissions committed by the committee of that society as per the said resolution. Such dissenting member, if he so desires, may also communicate in writing his dissenting note to

the Registrar within seven days from the date of the said resolution or decision. Any member, who is not present for the meeting in which the business of the society is transacted, and who has not subsequently confirmed the proceedings of that meeting, such member shall also not be held responsible for any of the business transacted in that meeting of the society."

Rule 58A reads as follows:-

"58A. Bond to be executed by elected members of Managing Committee. Every elected member of the Managing Committee shall execute a bond in Form M-20 within fifteen days of his assuming the office. Such bond shall be executed on the stamp paper as provided under the Bombay Stamp Act, 1958. The expenditure on stamp paper shall be borne by the society. The Chief Executive Officer/Secretrary of the society shall receive such bonds and keep them on record of the society and accordingly inform the Registrar within fifteen days from formation of the Committee".

7. It is clear from a reading of the section that a member who fails to execute a bond within 15 days is deemed to have vacated office as a member of the Committee. The disqualification, therefore, occurs upon failure to execute such bond and not for failure to forward the bond under rule 58A by the Chief Executive Officer/Secretary of the society to the Registrar. Therefore, a decision on this point is vital.

8. Mr.Thakkar, the larned counsel for the respondent nos.5 and 6, submitted that the order can be supported on other grounds. That may be so. I am of view that the revisional authority could not have overlooked the question of a statutory disqualification in this manner by simply ignoring it.

9. In the circumstances, the revisional order is set aside. The matter is remanded back to the revisional authority for a fresh decision, in accordance with law. It is made clear that this order shall not have the effect of removing the Administrator who admittedly has taken charge till the decision of the revisional authority. The revisional authority is requested to decide the matter within a period of three months.

10. The rule is made absolute in the aforesaid terms.

Sd/-

S.A. BOBDE, J.